IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 22598 of 2003

Between:

Mohammed Munawer Ali, Correspondent,

Re-Public High School, Uppuguda, Hyderabad.

..... PETITIONER

AND

1 Principal Secretary to Government,

School Education Department, A.P. Secretariat Buildings,

Government of Andhra Pradesh, Hyderabad.
2 The Commissioner and Director of School Education
3 Regional Joint Director of School Education, Hyderabad.
4 District Educational Officer, Hyderabad.
5 Smt. S.Sujatha, W/o S.Panduranga Rao,
R/o.H.No.18-6-541 and 543, Maqdoompura, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or directions more particularly one in the nature of Writ of Certiorari declaring the action of Respondent No.1 in issuing the proceedings in Memo No.1109/Ps.1/96-37 dt.1-9-2003 and consequential proceedings dated 27-9-2003 in Rc.No.1229/B42/95 as illegal, contrary to law, and quash the same by calling the records from the respondents in the interest of justice.

Counsel for the Petitioner: MRS. SOFIA BEGUM

Counsel for Respondents 1 to 4: GOVERNMENT PLEADER FOR SCHOOL EDUCATION

Counsel for Respondent No.5: Ms. E.T.MANJUSHAA

The Court made the following:

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ORDER:

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The petitioner herein is the Correspondent of Republic High School, Uppuguda, Hyderabad. He is aggrieved by the memo of the first respondent, dated 1-9-2003, whereby and whereunder the first respondent directed the second respondent to instruct the third respondent to permit the Management of Republic High School to shift the school to a suitable building for safety and security of the students studying in that school.

The facts, leading to filing of the writ petition, in brief, are as follows. The petitioner-School was established in 1956. It was running in an old rented building bearing Door No.18-7-607/12/1 in Dhanaiah Nagar, Uppuguda, Hyderabad. It appears, the petitioner herein sought permission to shift the school for various reasons and also for the reason that being very old, the building is not safe. The said application was not promptly considered. Even before any orders could be passed by the competent authority permitting the petitioner to shift the school, the petitioner appears to have shifted the school to a new building bearing Door No.23-3-161 and 167 in Sultan Shahi area. One Smt. P.Sakkubai and others, claiming themselves to be parents of the pupils, filed writ petition being W.P.No.17419 of 1995 before this Court, questioning the action of the Management in shifting the school. In the meanwhile, it appears, the District Educational Officer, fourth respondent herein, by letter dated 23-6-1994 granted permission to the Management to shift the school. This Court by an order dated 12-6-1996, directed cancellation of the permission given to the petitioner-School and directed the Government to hold enquiry with regard to the sale effected by the erstwhile owner to one S.Panduranga Rao, who is the husband of the fifth respondent. This order was passed having regard to the allegation that the petitioner herein connived with the landlords in selling the property to the said Panduranga Rao. Be that as it is, aggrieved by order in writ petition, the fifth respondent herein and her husband filed Writ Appeal No.774 of 1996. The same

was dismissed on 11-7-1996. The matter then was carried by the fifth respondent to the Supreme Court in Civil Appeal No.12875 of 1996.

The Supreme Court, by an order dated 29-4-1998, disposed of the Civil Appeal directing that the Republic School shall continue to be located in the disputed building until it is shifted according to law. The apex Court also directed that the petitioner-School should pay the rent to the owner. After the judgment of the Supreme Court, it appears, the petitioner-School started functioning again in the building bearing Door No.18-6-541 and 543 in Dhanaiah Nagar, Uppuguda, Hyderabad. At that stage, the first respondent issued a show-cause notice dated 22-11-1997 for taking over the school. The petitioner duly sent explanation on 12-5-1998 denying all the allegations. According to the petitioner, no action was however taken, but on 22-4-2003 an order was issued calling upon the petitioner to attend hearing before the Government with regard to taking over of the Management and shifting of the school to the nearest safe building. It is the case of the petitioner that the case was not heard on that day and when he was allegedly waiting for further proceedings, the impugned order came to be passed directing shifting of the school.

The impugned orders of the Government is questioned on the ground that Section 60 of the Andhra Pradesh Education Act, 1982 (for brevity, 'the Act'), does not contemplate a direction to shift the school and that the same is contrary to Rule 10(22) of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of School under Private Managements) Rules, 1993 (for brevity, 'the Rules'). The impugned order is also challenged on the ground that the same is passed without application of mind and without considering the material produced by the petitioner to show that the building where the school is being run is structurally safe.

The learned Assistant Government Pleader for School Education appearing for respondents 1 to 4 and the learned Counsel for the fifth respondent, Ms. E.T.Manjushaa, submit that the petitioner himself admitted before the Hon'ble Lokayukta as well as the Supreme Court, that the building is not safe and lacks basic facilities and therefore, he cannot turn around and take a different stand. They also urge that when the school building is not safe, it is incumbent on the part of respondents 1 to 4 to direct shifting of the school in the interest of safety of the students and teachers.

The submission of the learned Counsel for the petitioner that the case falls under Section 60 of the Act is misconceived. The Government has not directed the petitioner to handover the school. The Government having considered the entire material and also having regard to the earlier litigation, directed the Commissioner and Director of School Education to instruct the third respondent to permit the petitioner to shift the school as it is not structurally safe and there are no facilities and some of the rooms have already collapsed. The Government, on objective consideration of the material, came to the conclusion that there is a grave threat to the pupils of tender age, who attend the school. When such objective decision is arrived, it would not be proper for this Court to take a different view. Indeed, as rightly submitted by the learned Counsel for respondents before the Hon'ble Lokayukta in

enquiry in Complaint No.971 of 1999 as well in the written submissions filed before the Supreme Court in Civil Appeal No.12875 of 1996, the petitioner himself admits that the building is in a state of collapse.

In his reply dated 29-11-1999 filed before the Hon'ble Lokayukta, the petitioner stated as under:

"….. The Management of Republic High School, Uppuguda has been requesting the concerned authorities of Education Department to accord permission to shift the school to a better pucca and safe building since 1991 - Copies of same with office endorsement are enclosed herewith for reference. The present building is in a dilapidated condition and may cave-in any time and not suitable to run a High School. The roof and walls of one major portion of the building already fallen down."

"….. The present building accommodating Republic High School, Uppuguda is without basic civic amenities like drinking water, toilets etc., the class rooms are without doors and windows and intruders can very easily trespass into the premises without any hurdle."

"….. No same person will ask to run the school in such a building (just like Republic High School, Uppuguda premises), which may collapse any moment and endangering the innocent lives of students."

In the written submissions filed before the Supreme Court, the petitioner contended as under:

"….. Now the Republic High School is functioning in the old building situated at Maqdoompura, where there is no toilet; and many classes are run in the rooms without roof. The school building is unsafe, where the school records cannot be kept; it can be terms as Railway Station. The school building bearing No.13-6-543 is a ruined building, which is an abode of harmful insects and wild dogs."

Therefore, the petitioner now cannot be permitted to say otherwise. Despite the submission of the learned Counsel for the petitioner that subsequently, the petitioner has undertaken repairs to the building making it habitable, in the absence of any acceptable evidence the same cannot be accepted. In any view of the matter, these are the matters which do not fall within the purview of this Court in a case of this nature where the safety, life and future of students are involved.

The submission that the petitioner was not heard properly cannot be accepted. The principles of natural justice cannot always be applied in an inflexible mode. Applicability of these principles would depend on the facts and circumstances of this case and when the building is likely to collapse even if notice is not issued, an order is passed by the Government, is sustainable. The safety of the pupils attending the school is of utmost importance than any other considerations.

For the above reasons, this Court is not inclined to accept the writ petition. The orders passed by the Government are unexceptionable. Respondents 2 and 3 shall forthwith take necessary action in accordance with the Government Memo dated 1-9-2003 and if the petitioner is recalcitrant in complying the orders, it shall be open for the fourth respondent to immediately shift all the children to other schools. The Writ

Petition is disposed of accordingly. There shall be no order as to costs.

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V.V.S. RAO, J

November 08, 2004.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary, School Education Department, Government of

Andhra Pradesh, Secretariat Buildings, Hyderabad.
2 The Commissioner and Director of School Education, Hyderabad.
3 The Regional Joint Director of School Education, Hyderabad.
4 The District Educational Officer, Hyderabad.
5 Two CCs to the Government Pleader for School Education,

High Court Buildings, Hyderabad (O.U.T).

6 Two CD copies.